International Brotherhood of Electrical Workers Local 401 (Stone and Webster Engineering Corporation) *and* Lee Hill. Case 32–CB–492

23 May 1983

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On 19 August 1980 the National Labor Relations Board issued a Decision and Order in the above-entitled case,[1] finding, *inter alia*, that the Respondent had discriminated against Lee Hill by failing to display properly employer requests for workmen and failing to notify him of employment opportunities in violation of Section 8(b)(1)(A) and (2) of the National Labor Relations Act, as amended, and directing that the Respondent make Hill whole for any loss of earnings resulting from the discrimination.

On 13 November 1981 the Regional Director for Region 32 issued a backpay specification and notice of hearing. Upon appropriate notice issued by the Regional Director, a hearing was held on 24 and 25 June 1982 before Administrative Law Judge William J. Pannier III for determination of the amounts of backpay due Hill.

On 21 September 1982 Administrative Law Judge William J. Pannier III issued the attached Supplemental Decision in this proceeding, in which he found that Hill was entitled to the amounts of backpay set forth therein. Thereafter, the Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Supplemental Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, International Brotherhood of Electrical Workers Local 401, shall pay the amounts set forth in the said recommended Order.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

WILLIAM J. PANNIER III, Administrative Law Judge: This matter was heard by me in Reno, Nevada, on June 24 and 25, 1982. On August 19, 1980, the National Labor Relations Board issued a Decision and Order[1] finding that International Brotherhood of Electrical Workers Local 401, herein called Respondent, had violated both Section 8(b)(1)(A) and (2) of the National Labor Relations Act, as amended, 29 U.S.C. § 151 *et seq.*, herein called the Act, in three respects:[2]

> By failing to notify Lee Hill that he could return to his employment with Wing Electric and to dispatch him to said job on December 26, 27, 28, or 29, 1979; by failing to properly display during the dispatch period on February 9, 21, and 22, 1979, all requests for workmen from Stone and Webster; and by failing to dispatch Lee Hill to a job with Stone and Webster on February 9, 1979.

To remedy the violations of those two subsections of the Act, the substantive portion of the Board's Order directed Respondent to cease and desist from:

> (a) Refusing to follow its exclusive hiring hall procedure by failing to properly display to applicants for employment registered on the out-of-work book for their selection for dispatch requests by employers for the referral of workmen and refusing to dispatch said applicants to jobs to which they are entitled.
>
> (b) Refusing to notify employees of the resolution of a dispute which permits said employees to return to their previous employment and failing to dispatch employees in accordance with the resolution of said dispute.

In addition, Respondent was ordered to make "Hill whole for any loss of earnings he may have suffered by reason of the discrimination against him."

[1] 251 NLRB 321 (1980).

[2] In affirming the Administrative Law Judge's conclusion that discriminatee Hill incurred no willful loss of earnings prior to his departure from Jackson Electric on 8 June 1979, we note the undisputed finding in the underlying unfair labor practice case that it was a common practice among users of the Respondent's hiring hall to refuse referrals, accept less than 10-day referrals, or even to quit a job in order to secure a referral to long-term employment at the Stone and Webster jobsite. 251 NLRB at 325.

In regard to Hill's specific refusal to accept job dispatches from 7 March through 30 March 1979, the Administrative Law Judge reasoned, *inter alia*, that the Respondent's 20 February report that Stone and Webster would not be seeking employees for the next 30 days permitted Hill to infer reasonably that Stone and Webster *would* be seeking employees after the 30-day period had passed. We adopt the Administrative Law Judge's conclusion that Hill's refusals did not constitute willful failure to seek interim employment, but reject the above inference as unfounded and unnecessary.

[1] 251 NLRB 321.

[2] Though not of significance in this proceeding, the Board also concluded that Respondent had independently violated Sec. 8(b)(1)(A) of the Act by coercively interrogating an employee concerning his interview with a Board agent.

Following issuance of the Board's Order, Respondent entered into a stipulation that it had no objection to the Order. However, a controversy having arisen over the amount of backpay due under the terms of the Order, on November 13, 1981, the Regional Director for Region 32 of the National Labor Relations Board issued a backpay specification and notice of hearing.[3]

Based upon the entire record, upon the briefs filed on behalf of the parties, and upon my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

I. BACKGROUND AND ISSUES

Respondent's geographic jurisdiction covers northern and central Nevada. Its hiring hall is located in Reno, near the western border of Nevada. Since 1967, Hill had been working within the jurisdiction of Respondent and, until after the events involved in this proceeding had occurred, had resided in Elko, a Nevada community located 289 miles east of Reno.[4] Hill testified that no matter where he had been working in Respondent's geographic jurisdiction, and even on occasions when he had not been working but had been awaiting dispatch during the week at Respondent's hiring hall, it had been his almost invariable practice to return to his home during the weekends. The Wing Electric and Stone and Webster jobs, from which Respondent's unfair labor practices had precluded Hill from working, are both in Valmy, Nevada, located on Interstate 80, between Reno and Elko. Valmy is located 86 miles west of Elko[5] and, accordingly, 203 miles east of Reno. In anticipation of securing relatively permanent work in that area, Hill had purchased and had moved to Golconda, 23 miles west of Valmy and 180 miles east of Reno, a 32-foot, tip-out trailer in which he had planned to live and to cook his meals during the workweek.[6]

As set forth above, the Board concluded that Respondent had discriminated against Hill by failing to notify him that he could return to employment at Valmy, with Wing Electric, and by failing to dispatch him there on December 26 through 29, 1978.[7] On January 5, 1979, Hill again had been dispatched to Wing Electric, presumably commencing work there on January 8, 1979. Accordingly, for this first period of discrimination against Hill, the specification and amended specification set forth a backpay period commencing December 26, 1978, and continuing until January 5, 1979.[8] Respondent has advanced two objections to the number of days pleaded for this backpay period. First, Respondent argues that the General Counsel has miscomputed the total number of workdays for which Hill is entitled to reimbursement in this backpay period. As discussed below, there is merit to Respondent's contention in this regard. Second, it is undisputed that during this almost 2-week period, Hill had refused dispatch to other projects, located in the Reno area. Thus, the record discloses that Hill had rejected two dispatches on each of 3 days (December 28 and 29 and January 2) and three dispatches offered him on January 3, prior to his redispatch to Wing Electric on January 5. Respondent argues that in so doing, Hill had incurred a willful loss of earnings which serves to reduce the number of days for which backpay is owed him in this period. As discussed below, I conclude that there is no merit to Respondent's contention in this regard.

Following his redispatch there, Hill had worked for Wing Electric until January 24, when he had been discharged. He then had registered at Respondent's hiring hall and had awaited dispatch. In its Order, the Board concluded that Hill had been unlawfully deprived on a dispatch to Stone and Webster at Valmy on February 9. In the specification and amended specification, the backpay period set forth as resulted from this act of discrimination is one commencing on February 9 and continuing until July 2, when Hill had commenced working for Stone and Webster at Valmy as a result of a dispatch to that location on June 29. Thus, the backpay period resulting from this act of discrimination is alleged to have commenced on February 9, and to have continued through June 30. According to the specification and amended specification, there had been a total of 105 working days in this period.[9] At the outset, Respondent argues that this computation miscounts the total number of working days during this backpay period and that, at best, there can only be a total of 99 working days during it. As discussed below, Respondent's argument in this regard is a correct one. Respondent further argues that after February 9, Hill had incurred a willful loss of earnings in view of three undisputed facts. First, Hill had rejected 58 of 61 dispatches proffered to him during this backpay period.[10] Second, though Hill had accepted dis-

[3] An amended backpay specification has been attached to the brief filed on behalf of the General Counsel.

[4] All mileage set forth in this supplemental decision is based on that recited in The Murray Map of The Silver State of Nevada, which is Resp. Exh. 1. In this instance, the mileage between Reno and Elko is that listed on the "mileage chart" portion of that exhibit.

[5] It is 72 miles from Elko to Battle Mountain and 14 more miles to Valmy, according to Resp. Exh. 1.

[6] Prior to commencing work for Wing Electric, Hill had worked in Winnemucca, another community near Golconda. When he had started working there, he had owned another trailer in which he had lived and had cooked his meals, thereby minimizing his lodging and meal expenses. Later, he had purchased the 32-foot trailer with the same objective in mind: minimizing his expenses.

[7] Briefly, by way of background, on Friday, December 22, 1978, Hill and other employees of Wing Electric had quit en masse to protest the discharge of two other employees. Respondent subsequently had secured Wing Electric's agreement to reinstate them, but never had notified Hill of that agreement, with the result that Hill was not afforded the opportunity to return to work with Wing Electric as had been the other employees.

[8] Unless stated otherwise, all dates in December are in 1978 and all dates from January through July are in 1979.

[9] There were 40 days between February 9 and March 30, and 65 working days between April 1 and June 30.

[10] Thus, Respondent's records, which are not disputed, disclose that Hill had declined the following number of dispatches during 1979:

February 12–1	March 19–3
February 13–3	March 20–4
February 14–3	March 21–2
February 15–1	March 22–4
February 16–2	March 23–1
March 7–4	March 27–1

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patch to Moltzen Electric on April 3, he had been terminated by Moltzen on May 23. Third, after having been dispatched to Jackson Electric on June 1, Hill had quit and did not reregister at Respondent's hiring hall until June 27. Therefore, argues Respondent, by having failed to accept proffered dispatches, by having been terminated by Moltzen Electric, and by having quit employment at Jackson Electric, Hill had incurred a willful loss of earnings that precludes him from receiving backpay, at least during portions of the post-February 9 backpay period.

For each of these arguments, the General Counsel advances counter arguments based upon Hill's testimony. With respect to rejection of dispatches, the General Counsel points to Hill's testimony that none of these jobs had the combined advantages of long-term work plus proximity to his Elko home that he would have enjoyed by working at Valmy for Stone and Webster.[11] With regard to the Moltzen Electric termination, Hill testified that it had resulted from his complaints about violations of the collective-bargaining agreement. Based on this testimony, the General Counsel argues that the termination at Moltzen had been for engaging in protected activity and, accordingly, had not been a termination for cause. Finally, Hill testified that the last day on which he had worked for Jackson Electric had been on June 8, and that thereafter he had gone "home to spend with my family, you know, a two-week period in there." Hill agreed that he had made a voluntary decision not to work past June 8. Based upon this testimony, the General Counsel argues that "Hill was entitled to take an unpaid vacation just as he would have been, absent Respondent's discrimination." Thus, while agreeing that Respondent is not obliged to make Hill whole for the 2-week vacation period, the General Counsel argues that Respondent is obliged to make Hill whole for the 3-day period thereafter, when he had reregistered and had been awaiting dispatch to a new job. For the reasons discussed below, I find that Hill did incur a willful loss of earnings by quitting employment with Jackson Electric on June 8, but did not do so before that time.

Certain other issues arise as a result of the parties' disagreement concerning whether or not specific items should be taken into account in computing the backpay owing to Hill. First, the General Counsel contends, contrary to Respondent, that Hill is entitled to a daily premium, denominated "subsistence pay," that employees who work at Valmy are entitled to receive under the terms of Respondent's agreements with employers who operate projects there. This contention is based upon the fact that Hill would have received such payments had he been permitted to work first for Wing Electric and then for Stone and Webster at Valmy absent Respondent's discrimination against him. Second, the General Counsel argues that Hill's lodging, food, and transportation expenses incurred while working on the three interim jobs should be deducted from his interim earnings inasmuch as they represent expenses that Hill would not have incurred but for Respondent's discrimination against him.[12] As discussed below, I agree with the General Counsel's contentions.

March 8–4	March 28–2
March 9–3	March 29–1
March 12–3	March 30–3
March 13–2	May 24–1
March 14–5	May 30–1
March 15–3	June 27–1

Hill accepted dispatches on February 20 to a location in Reno for a 10-day call; to Moltzen Electric on April 3; and, to Jackson Electric on June 1.

[11] In her brief, counsel for the General Counsel argues, in addition, that "Hill was interested in receiving subsistence and travel allowances as reimbursement for expenses he did not incur, for such allowances would amount to additional compensation." However, this argument lacks support in the record. The parties stipulated that Hill had "refused [these dispatches] because they were in Reno, because he was hoping and expecting to obtain employment closer to his home in Valmy, hopefully on the Stone and Webster job which he expected to last for a long time." Moreover, Hill's testimony in this connection was consistent with that stipulation: that he had been concerned only with the distance from his Elko home of these dispatches and with their duration. At no point did Hill claim that the presence or absence of subsistence pay nor that the payment or nonpayment of transportation expenses had influenced his decisions to reject dispatches offered to him. Accordingly, the presence or absence of subsistence pay and transportation expenses are not entitled to any weight in assessing Hill's reasons for having rejected dispatches to other employment between February 9 and June 30.

[12] Both the specification and amended specification allege, as part of expenses of interim employment, weekly round trips between Elko and the sites where Hill had worked for Town & Country, Moltzen Electric and Jackson Electric during the periods that he had been employed by each of the latter. Respondent did not dispute the general proposition that Hill was entitled to be compensated for transportation expenses incurred in performing interim jobs by their deduction from interim earnings. Nor could it do so. See, e.g., *Hoosier Veneer Co.*, 21 NLRB 907, 938, fn. 26 (1940); *Aircraft and Helicopter Leasing Sales*, 227 NLRB 644 (1976), enfd. 570 F.2d 351 (9th Cir. 1978). Moreover, Respondent does not contend that the amount attributed to that expense, 10 cents per mile, in the specification and amended specification is an excessive or otherwise improper one. What Respondent does contend is that an excessive number of miles has been claimed. As noted above, Hill had made it a practice to journey to his Elko home almost every weekend and, further, he acknowledged that he would have followed that practice had he been dispatched to the Valmy jobs. Indeed, it had been to facilitate such trips that he had sought to work at Valmy. In her comprehensive and well-written brief, counsel for the General Counsel acknowledges as much and moves to amend the backpay specification in two respects: First, to reduce the mileage expense claimed to only that between Golconda and the sites of the interim employment and, second, to reduce the number of such trips in connection with Hill's employment by Moltzen Electric from nine to eight. I grant that motion.

In addition, while the Town & Country and Jackson Electric projects had been in Reno, the Moltzen Electric one had been in Carson City, 30 miles south of Reno. The specification and amended specification add the Reno to Carson City mileage to the transportation expenses of Hill during the period that he had been employed by Moltzen Electric. However, at the hearing, evidence was produced showing that, consistent with the obligation imposed by its collective-bargaining agreement with Respondent, Moltzen Electric had paid transportation expenses from Reno to Carson City to Hill during the time that it had employed him. Indeed, in her brief, counsel for the General Counsel acknowledges that Hill "apparently did receive some compensation for mileage or travel time in connection with the Moltzen job, [but] those amounts were designed to pay for travel expenses from Reno to Carson City . . . not for the additional expense of driving to Elko on weekends." Inasmuch as Hill is entitled only "to a deduction from interim earnings of the expense of travel to interim employment which exceeded the expense he would have had to travel to and from [Golconda each week]," *Chicago Local 245, Graphic Arts (Alden Press)*, 217 NLRB 1112, 1119 (1975), but is not entitled to recover expenses that he would have incurred in any event nor expenses for which he actually was compensated by an interim employer, I conclude that the only transportation expenses that can be deducted from interim earnings are the 180 miles between Golconda and Reno,

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II. THE COMPONENTS OF GROSS BACKPAY

Respondent does not dispute that a proper measure of gross backpay is the daily wage rate that Hill would have received had he not been prevented from working at Valmy, first for Wing Electric and then for Stone and Webster, by Respondent's discrimination. Nor is it disputed that the wage rate between December 26 and May 31 had been $118.64 per day ($14.83 per hour) and had been $125.04 per day ($15.63 per hour) on and after June 1. Finally, there is no disagreement that pension contributions should be included in the amounts owing to Hill by virtue of Respondent's discrimination and, further, that the correct amount of those contributions had been $1.37 per hour during the entire backpay period. However, there is a dispute concerning whether or not Hill should receive a $16.65 per day subsistence payment, paid to employees who worked at Valmy, for Wing Electric and for Stone and Webster, during the entire backpay period.

This subsistence payment was required under the collective-bargaining agreements to be paid to all employees working on projects located beyond a certain distance from the intersection of Highway 395 and Interstate 80 in Reno. The payment was made automatically for those days during which employees had actually worked, even if only for a portion of a day, and for those holidays which fell between two workdays, e.g., on Tuesday, Wednesday, or Thursday. As subsistence payments had been negotiated to offset living expenses incurred by employees and to induce employees to accept employment at relatively remote sites from Reno, such as Valmy, they were not paid to employees if they did not work at least a portion of a scheduled workday. Nor were they made for holidays which fell on Mondays and Fridays when employees were able to be at their homes for, in effect, long weekends. It is based upon the purposes for subsistence payments and their method of application that Respondent grounds its argument that Hill should not be compensated for their loss during the backpay period—that is, inasmuch as he did not actually work at a remote site and did not undergo expenses of living for having to work at Valmy, he should not be compensated for inconvenience and losses that he did not incur. While facially appealing, analysis of the circumstances presented here, in the context of backpay doctrine, serves to negate Respondent's argument and leads to the conclusion that subsistence payments should be included as a component of Hill's gross backpay.

[T]he "make whole" concept embraces the value of any benefit that "flowed directly from and was intimately connected with the . . . position from which [a discriminatee] was discriminatorily [deprived]." *Holly Manor Nursing Home*, 235 NLRB 426, 428 (1978). Thus, a make whole remedy "includes emoluments of value arising out of the employment relationship in addition to or supplementary to the actual rate of pay per hour worked or per unit produced." *W. C. Nabors Co.*, 134 NLRB 1078, 1086 (1961), enfd. as modified 323 F.2d 686 (5th Cir. 1963), cert. denied 376 U.S. 911 (1964). As the United States Court of Appeals for the Fifth Circuit agreed in *Nabors:*

> [T]he "make whole" concept does not turn on whether the pay was wholly obligatory or gratuitous, but on the restoration of the *status quo ante.* [Citations omitted.] . . . "Back pay" as used in section 10(c) includes the moneys, whether gratuitous or not, which it is reasonably found that the employee would actually have received in the absence of the unlawful discrimination. [323 F.2d at 690.]

Had subsistence payments been made to employees working at Valmy on the basis of costs actually incurred and on the basis of receipts submitted by employees—as a reimbursement for expenses on a dollar for dollar basis—the situation here might be quite different. But, as pointed out above, the subsistence payment was an automatic one. It was made without regard to employees' actual inconvenience and living expenses. Indeed, it was made without regard to whether a particular employee, such as one who resides in Valmy, actually incurred added inconvenience or expenses by virtue of working on a project there. Whether an employee lived and ate at a home in Valmy, or lived and ate at the camp erected there by Stone and Webster, or pitched a sleeping bag in the open desert and subsisted on scrub and cactus, that employee received the same amount of subsistence pay as every other employee for each day that he or she worked at Valmy. Consequently, notwithstanding the purposes for having negotiated this daily payment and despite the denomination of it as "subsistence pay," it was made without regard to actual inconvenience or cost-of-living and was received by employees who worked at Valmy simply for having worked there. In practice, it had become one of the "emoluments of value arising out of the employment relationship in addition to or supplementary to the actual rate of pay per hour worked," *W. C. Nabors Co.*, 134 NLRB at 1086, and represented an amount "that [Hill] would actually have received in the absence of the unlawful discrimination." *W. C. Nabors Co.*, 323 F.2d at 690.

This distinction—between a reimbursement for inconvenience and living costs *actually* incurred and a premium paid for inconvenience and living costs *likely to be*, but not necessarily, incurred—becomes perhaps more apparent when the matter is examined from a somewhat different perspective. If the wage rate for a particular job, from which a discriminatee has been unlawfully deprived of employment, is higher than the ordinary rate due to a particularly unique aspect of that job, such as unusual safety hazards connected with its performance, that higher rate is not reduced for backpay purposes because, due to the discriminatory deprivation of employment from it, the discriminatee was not actually subjected to the hazard. Similarly, if, rather than having negotiated a daily subsistence payment, Respondent had negotiated a higher wage, to reflect likely greater inconvenience and higher living expenses, for jobs as distant from the Reno basepoint as Valmy, there would be no basis for reducing the wage rate in computing backpay to reflect the absence of anticipated inconvenience and ex-

times the number of round trips made by him when employed by Town & Country, Moltzen Electric, and Jackson Electric.

pense due to the discrimination. Backpay doctrine simply does not allow wage rates to be broken down and dissected to ascertain which portions were the result of particular concerns of those who negotiated and formulated them and, then, to ascertain whether or not the effects of the discrimination were such that discriminatees had been relieved of these factors as a result of deprivation of employment.

In a like vein, when daily premiums are paid to employees, either in money or in kind, in connection with jobs from which discriminatees have been deprived, those premiums are included in gross backpay without regard to whether or not the discriminatees actually performed or did not perform the function to which those premiums are related. For example, gross backpay has included monetary awards representing the cost of apartments and ancillary services that normally are provided by the employer even though, as a result of the discrimination, discriminatees did not provide the related employment service for which the apartment was needed. See, e.g., *Pierre Pellaton Enterprises*, 222 NLRB 555, 557 (1976); *Amshu Associates*, 234 NLRB 791, 795–796 (1978). Of course, it might be argued that such monetary awards represented interim rental costs that those discriminatees had been obliged to incur because they had been deprived of their jobs and, accordingly, of their living quarters, with the result that they had been forced to arrange for and incur the cost of alternative living quarters. But this also is true in Hill's case. To secure employment through Respondent's hiring hall, he had to be at Respondent's Reno facility. To do that, he had to reside and eat in Reno, thereby incurring expenses for seeking interim employment that he would not have incurred had he been able to live and cook for himself in his Golconda trailer. Further, he had to pay rental for the trailer space in Golconda even though he was not readily able to live in it during the workweek due the distance between these two locations. Therefore, there is a parallel between Hill's circumstances and those of the employees in *Pierre Pellaton* and *Amshu*.

In sum, had Hill not been deprived of continued employment with Wing Electric in December and had he not been deprived of dispatch to Stone and Webster in February, he would have received a $16.65 daily payment. While the purpose for negotiating and for including such payments in collective-bargaining agreements had been to offset employee inconvenience and expense for having to work and live in relatively remote areas, in practice those payments were made uniformly and automatically, without regard to actual, if any, inconvenience and expense incurred by employees working there and without the requirement that employees present receipts or other proof that they had incurred actual expenses, much less inconvenience. Moreover, the subsistence payments are sought on Hill's behalf for periods when he had been obliged to pay for lodging and meals in Reno that he would not have been obliged to pay had Respondent not prevented him from working at Valmy. In such circumstances, I conclude that the daily $16.65 payments were benefits that "flowed directly from and [were] intimately connected with the" Valmy projects, *Holly Manor Nursing Home, supra*, and are properly included as a component of gross backpay.

III. THE NUMBER OF DAYS IN THE GROSS BACKPAY PERIOD

As set forth above, the Board concluded that Hill had been deprived of reemployment with Wing Electric from December 26 through January 5. The specification and amended specification claim backpay for the last 4 working days in 1978 (December 26 through 29) and for the first 5 calendar days in 1979.[13] However, a review of the Board's decision discloses that although it had been on December 26 that Respondent had secured Wing Electric's agreement to reemploy the employees that had quit on December 22 and while it also had been on December 26 that Respondent had begun notifying those employees, save for Hill, that they could return to work with Wing Electric, it had not been until December 27 that any of them actually had returned to work for Wing Electric. (251 NLRB at 323–324.) The testimony in this proceeding served to confirm that fact. Thus, even had Hill not been the object of discrimination by Respondent, he would not have worked on Tuesday, December 26 for Wing Electric. "A backpay order is a reparation order designed to vindicate the public policy of the statute by making the employees whole for losses suffered on account of an unfair labor practice." *Nathanson v. NLRB*, 344 U.S. 25, 27 (1952). Inasmuch as Hill suffered no loss by not having worked on December 26, there is no basis for compensating Hill for that date. Accordingly, the total number of days in the first backpay period should be only seven in number.

In addition, a further reduction should be made in the number of days alleged in the specification and amended specification for the second backpay period. It is alleged that there were 40 working days between February 9 and March 31. However, while Respondent's unlawful refusal to dispatch Hill to Stone and Webster was found to have occurred on Friday, February 9, it was also found that Stone and Webster's requisition had been "for three journeyman wiremen to report on February 12." (251 NLRB at 325.) Consequently, while the act of discrimination had occurred on February 9, Hill had not experienced any "losses suffered on account of [it]," *Nathanson, supra*, until Monday, February 12. Moreover, as there is no evidence that any weekend or overtime work had been performed for Stone and Webster between February 12 and March 30, and in view of the fact that there were only 7 calendar weeks during that period, the correct number of workdays between those two dates is 5 workdays times 7 calendar weeks, or 35, rather than 40, total workdays.

Finally, there are 65 workdays alleged to have occurred between April 1 through June 30, in the specifica-

[13] I grant the General Counsel's motion to amend the amended specification to eliminate the backpay claim for New Year's Day and for Memorial Day in light of the evidence that these are unpaid holidays under Respondent's collective-bargaining agreements and, accordingly, days for which Hill would not have been paid even had Respondent not discriminated against him. Thus, the number of claimed working days is reduced by one each in the first and second quarters of 1979.

tion and amended specification. However, the Memorial Day holiday fell in this period and as set forth in footnote 13, the General Counsel no longer claims compensation for Hill for that nonpaid holiday. Consequently, the backpay period from April 1 through June 30, consists of but 64 working days.

IV. HILL'S EFFORTS TO SECURE INTERIM EMPLOYMENT

Respondent asserts that after each of its acts of discrimination against him, Hill had incurred willful losses of earnings, principally by having rejected dispatches to other employers, but also by having been terminated for cause by Moltzen Electric and by having quit employment with Jackson Electric. I conclude that this argument has only partial merit.

As set forth above, employees are entitled to be made "whole for losses suffered on account of an unfair labor practice." *Nathanson*, above. However, "[a] worker who has been a victim of an unfair labor practice is not entitled to simply await reimbursement from his or her employer for wages lost . . . ." *NLRB v. Mercy Peninsula Ambulance Service*, 589 F.2d 1014, 1017 (9th Cir. 1979). That is, "the employee may not voluntarily withdraw from the labor market and insulate himself against employment, thus willfully incurring the losses for which he seeks recompense." *Keller Aluminum Chairs Southern*, 171 NLRB 1252, 1256 (1968). For, implementation of the "make whole" method of vindicating public policy "must be balanced against the importance of taking fair account, in a civilized legal system, of every socially desirable factor in the final judgment." *Phelps-Dodge Corp. v. NLRB*, 313 U.S. 177, 198 (1941). Thus, in each situation where a worker has been deprived of work by conduct proscribed by the Act, the backpay determination must not ignore the balance that must be struck between allowing "a skilled and healthy worker to remain idly unemployed . . . [and] . . . encouraging him to obtain a job, comparable to his regular job in working conditions and wages. . . ." *NLRB v. Madison Courier*, 505 F.2d 391, 397 (D.C. Cir. 1974). This is so because of the need to accomplish "not so much the minimization of damages as the healthy policy of promoting production and employment." *Ibid.* at 200. It is from this basis that the mitigation doctrine has evolved. Essentially, that doctrine obliges employees entitled to reimbursement as a result of unfair labor practices, to exercise reasonable diligence[14] to secure substantially equivalent employment.[15] It is within this analytical framework that Respondent's principal subsidiary argument concerning willful loss of earnings must be addressed.

As set forth above, following Respondent's failure to notify Hill that he could return to work for Wing Electric, he had rejected dispatches to other projects on December 28 and 29, and, again, on January 2 and 3. However, in the underlying decision, it was found that it had not been until after Hill had driven from Elko to Respondent's Reno hiring hall on December 28 that he had been able to confirm that Wing Electric was reemploying employees who had quit 6 days earlier. Based upon the description in that decision, apparently a good portion, if not all, of the remainder of that day had been spent by Hill trying to straighten out the confusion created by Respondent's own failure to notify him about the rehiring of employees by Wing Electric. Moreover, Hill testified that in December he had preferred a job at Valmy to one in Reno, and that he had expected a Stone and Webster call for employees to be dispatched. In fact, it is undisputed that two employees had been dispatched to Stone and Webster on either December 28 or 29, and, accordingly, it cannot be said that Hill's expectations of a Stone and Webster dispatch request had been an unrealistic one.

Although nothing in the Board's Order specifically entitled Hill to a job at Valmy as a remedy for Respondent's unfair labor practices, it is a fundamental proposition of backpay doctrine that "there is no requirement that an employee wrongfully terminated must instantly seek new work . . . ." *Keller Aluminum Chairs Southern, supra*, 171 NLRB at 1257. Accord: *Saginaw Aggregates*, 198 NLRB 598 (1972). For example, in *Keller*, an employee who did not seek work during the 2-week period immediately following the discrimination against him was held not to have failed to exercise due diligence where thereafter he satisfied the obligation imposed by the mitigation doctrine; i.e., sought interim employment. Similarly, an employee who quit one interim job to take another at a higher rate of pay was held not to have incurred a willfull loss of earnings, as a result of having quit the first employer, when he was laid off by the second employer, absent "evidence that the employment with [the first interim employer] was 'permanent' while that with [the second interim employer] was specified to be 'temporary.'" *Laborers Local 1440 (Southern Wisconsin Contractors)*, 243 NLRB 1169, 1172 (1979).

Among the factors which must be examined in assessing the legitimacy of discriminatees' rejection of interim employment are both distances from their homes, *Teamsters Local 439 (Los Angeles-Seattle Motor Express)*, 194 NLRB 446, 451 (1971), and length of employment. *NLRB v. Tama Meat*, 634 F.2d 1071, 1073 (8th Cir. 1980). Here, Hill's rejection of interim dispatch offers had been motivated by a desire to secure employment closer to his home and of longer duration than he had suspected that those offered to him would afford. Thus, there is no basis for concluding that he had been acting arbitrarily in rejecting those dispatch offers. It is undisputed that Stone and Webster had been expected to, and did, seek to have employees dispatched by Respondent in late December. Hill's acceptance of dispatch to Wing

[14] A requirement phrased in various forms: "good faith effort," *Richard M. Brown, D. C.*, 233 NLRB 53, 54 (1977); "reasonable effort," *DeLorean Cadillac*, 231 NLRB 329, 330 (1977); "reasonable exertion," *Arduini Mfg. Corp. v. NLRB*, 394 F.2d 420, 423 (1st Cir. 1968). No matter how formulated, it means "conduct consistent with an inclination to work and to be self-supporting . . . best evidenced . . . by the sincerity and reasonableness of the efforts made by an individual in his circumstances to relieve his unemployment. Circumstances include the economic climate in which the individual operates, his skills and qualifications, his age, and his personal limitations." *Mastro Plastics Corp.*, 136 NLRB 1342, 1359 (1962), enfd. 354 F.2d 170 (2d Cir. 1965), cert. denied 384 U.S. 972.

[15] Which, also, has been phrased in various formulations, such as "comparable," *Phelps-Dodge, supra.*

Electric on January 5 negates any inference that he had intended to remain idly unemployed following Respondent's discrimination against him. The time between Respondent's unfair labor practice and Hill's acceptance of dispatch to Wing Electric, less than 2 weeks, was not so excessive as to be unreasonable in duration. In these circumstances, I conclude that Respondent has failed to establish that Hill had incurred a willful loss of earnings between December 27 and January 5.

Similarly, the evidence does not support a conclusion that Hill had willfully incurred a loss of earnings immediately after Respondent's refusal to dispatch him to Stone and Webster. Again, he did accept a dispatch, to Town & Country on February 20, within 2 weeks of the act of discrimination and, further, during the week immediately following the one during which he would have commenced work for Stone and Webster, absent Respondent's unfair labor practice. His willingness to accept dispatch to Town & Country is inconsistent with any inference of a decision by him to abandon the labor market that, otherwise, might possibly be based on his rejection of 10 dispatches offered to him during the week of February 12 through 16. *Keller Aluminum Chairs Southern, supra*; *Saginaw Aggregates, supra.*

Following Hill's reregistration with Respondent, upon completion of his work on the Town & Country project, he had rejected all dispatches offered to him[16] until April 3, when, due to economic necessity, he had accepted dispatch to Moltzen Electric. The parties stipulated that, as had been true of dispatches offered to him during other periods, Hill had rejected these dispatch offers "because they were in Reno, because he was hoping and expecting to obtain employment closer to his home in Valmy, hopefully on the Stone and Webster job which he expected to last for a long time." At first blush, there would appear to be considerable merit to Respondent's argument that Hill's rejections of these dispatches had constituted a "voluntar[y] withdraw[al] from the labor market." *Keller Aluminum Chairs Southern, supra.* After all, as quoted in section I, above, the Board's Order, insofar as pertinent here, did no more than direct Respondent to cease and desist from refusing to dispatch applicants to jobs to which they are entitled and, further, directed it to make Hill whole for the loss sustained by him as a result of the discrimination. The Order did not oblige Respondent to ensure that Hill obtain employment at Valmy. Nor did it entitle him to employment there. Furthermore, it is stipulated that Hill was qualified to perform the work involved at projects to which dispatches had been offered him in March and, of course, any differences in pay or expenses incurred by him in accepting those dispatch offers could be remedied as part of the backpay owing by Respondent. In such circumstances, Respondent has a seemingly firm basis for arguing that, by having rejected dispatches in March, Hill had been simply "remain[ing] idly unemployed," *Madison Courier, supra*, and that his conduct in doing so had tended to prevent accomplishment of "the healthy policy of promoting production and employment." *Phelps-Dodge, supra.*

[16] A total of 45 dispatch offers.

However, backpay principles permit a discriminatee to forgo the offer of a particular job if, by so doing, that discriminatee can realize an opportunity to obtain future employment that is better than the immediate opportunity being rejected. See, e.g., *Miami Coca-Cola Bottling Co.*, 151 NLRB 1701, 1702–03 (1965) (Coughlin); *Keller Aluminum Chairs Southern, supra*, 171 NLRB at 1257; *Laborers Local 1440, supra.* The only requirement or test for satisfying that principle is that there must be something more than "a vague expectation" that better employment will become available. *Knickerbocker Plastic Co.*, 132 NLRB 1209, 1217 (1961) (Jennie A. Carrisosa). Here, as set forth in the Decision adopted by the Board, before having accepted the Town & Country dispatch on February 20, Hill had asked John Byrne, Respondent's business manager, when Stone and Webster dispatch requests likely could be anticipated. Byrne had replied that he had spoken to Stone and Webster's foreman who had said that his employer had "sufficient manpower for the next 30-day period unless some additional work developed or he received a request to do additional work for which he did not have sufficient manpower." (251 NLRB at 325.) So far as the record discloses, at no point was this estimate of the period within which Stone and Webster definitely would not be seeking employees ever extended. More specifically, at no point following completion of the Town & Country job was Hill ever told that Stone and Webster would not be seeking employees for dispatch once the 30-day period had expired, which would have been during the week of March 19 to 23. Given the circumstances of the projected length of the Stone and Webster project and its more proximate location to Hill's home than Reno jobs, Hill's decision to wait 2 or 3 weeks, upon completion of his job at Town & Country, to ascertain if Stone and Webster would, in fact, place a dispatch order does not appear to have been unreasonable. *Miami Coca-Cola Bottling Co., supra.* "Under the circumstances, it would appear reasonable that he might await word from [Stone and Webster] rather than venturing into [the] job market." *Keller Aluminum Chairs Southern, supra*, 171 NLRB at 1257.

In other circumstances, it might be significant that, following his return from the Town & Country job, Hill apparently had made no effort to ascertain the status of Stone and Webster's dispatch request situation from Respondent's officials and, further, that he, in effect, acknowledged that he independently had been able to obtain information about Stone and Webster's need for employees by "talk[ing] to some of the guys who were on the project." Yet, given Respondent's previous acts of discrimination against him, there was considerable basis, from his point of view, for Hill to have distrusted dispatch information given to him by its officials. Indeed, such distrust could only have been reinforced when, within but a day or two of the conversation in which Byrne had related to him that Stone and Webster would not need employees within the next 30 days, and after which Hill had accepted a dispatch that had taken him away from his daily vigil in Respondent's hiring hall, an order had been placed and employees had been dis-

patched to Stone and Webster.[17] Moreover, the reinforcement of that distrust only could have been magnified by the discriminatory manner in which Respondent had handled that request, which, as set forth above, the Board concluded had violated Section 8(b)(1)(A) and (2) of the Act. (251 NLRB at 327.) Finally, to expect Hill to have accepted the burden of working on projects in the Reno area and, at the same time, to have attempted to ascertain, from "some of the guys . . . on the project," whether and when Stone and Webster would be requesting employees for a project over 200 miles distant from Reno would be to effectively shift the burden of remedying the unfair labor practice to Hill. Yet, it was Respondent, not Hill, who bore the burden of remedying the unfair labor practices which it, not he, had committed.

In sum, though not entitled to dispatch to Stone and Webster under the terms of the Board's Order, a job with that firm at Valmy was most equivalent to the one from which Hill had been deprived as a result of Respondent's February 9 unfair labor practice, due to its proximity to Hill's home and to the anticipated duration of the Valmy project. It is not disputed that at that time, the Stone and Webster project had been nearing the stage where an expansion of its personnel complement had been anticipated and, thus, where requests for additional employees to be dispatched to it had been expected. Before having been dispatched to Town & Country on February 20, Hill had been told that Stone and Webster would not be seeking employees for the next 30 days. That period of time had been scheduled to expire within approximately 2 weeks of the time that Hill had returned to reregister at Respondent's hall on March 5. There is no evidence that, following Hill's reregistration, any of Respondent's officials had made any statements to him that reasonably could be said to have led Hill to believe that Stone and Webster might not be seeking the dispatch of additional employees once that 30-day period had passed. "Under the circumstances, it would appear reasonable that he might await word from [Stone and Webster] rather than venturing into [the] job market." *Id.*

Furthermore, it cannot be said that Hill had waited an excessive period of time after passage of that 30-day period before accepting dispatch to Moltzen Electric on April 3. Based upon what he had been told by Byrne, Hill reasonably could anticipate that if Stone and Webster would be seeking to have employees dispatched, its request likely would be placed in late March. Thus, had he accepted dispatch during that period to another employer, he might have forgone any opportunity to secure a position at Valmy that would have ensured the combined advantages of long-term employment and proximity to his home. No other dispatch offered to him during that period had those dual advantages.[18] When March concluded with no order for employees being placed Stone and Webster, Hill had accepted the very first dispatch offered to him, according to Respondent's abstract of its dispatch records, in April. Consequently, once the week of March 19 to 23, during which the 30-day period mentioned by Byrne had expired, had passed, Hill had waited only an additional week and then had accepted the first dispatch offered to him. In these circumstances, it cannot be said that Hill's rejection of dispatch opportunities during the weeks of March 19 to 23 and March 26 to 30 had constituted a withdrawal from the labor market nor an effort to remain idly unemployed while awaiting reimbursement by Respondent for the effects of its unfair labor practice on February 9.

On May 23, Hill had been terminated by Moltzen Electric. Respondent argues that this termination, of itself, serves to demonstrate a willful loss of earnings by Hill and, thus, to terminate its backpay liability for its February 9 unfair labor practice. Hill, however, testified that he had been terminated for complaining about Moltzen Electric's violations of its collective-bargaining agreement with Respondent. Although he did not file a grievance with Respondent concerning that termination, he testified that he had not done so because he had not felt that Respondent would give him "any support" inasmuch as he had reported contractual violations by Moltzen Electric prior to his termination by it and Respondent had taken no perceptible action as a result of his reports. While there is some basis for being suspicious of Hill's explanation in this regard, the fact is that Respondent has presented no evidence showing, first, that Hill had been terminated for cause by Moltzen Electric[19] and, second, that Hill's work performance at Moltzen Electric would have been unacceptable to Stone and Webster had he been working for the latter. See *Aircraft*

[17] That Byrne's earlier remark regarding Stone and Webster's employment needs may not have been intended to deliberately deceive Hill is not a significant consideration in this regard. For the significant point here is Hill's perception of what had occurred and not Byrne's true intentions in having made the statement that he did to Hill.

[18] For example, while the Electrical Equipment dispatch offered to Hill on March 20 would have enabled him to work at a location relatively close to his home, it did not offer the opportunity for long-time employment that a Stone and Webster position would have afforded him. Moreover, its distant location from Reno would have made it even more difficult for Hill to have monitored the possibility of Stone and Webster jobs arising than would have been the case had he accepted dispatch to projects in the Reno-Western Nevada area. In such circumstances, Hill, in effect, traded away employment relatively near his home that was short-term in nature for a distinct possibility that Stone and Webster would hire him for long-term employment at a location about the same distance from his home and certainly closer to his home than one in the Reno area where he might have been obliged to accept employment once the Electrical Equipment job had been completed and he had to again reregister for dispatch with Respondent. It must be kept in focus that, as a discriminatee, Hill was obliged to do no more than make "reasonable exertions" to secure comparable employment and that he was "not held to the highest standard of diligence in [those efforts]." *Mercy Peninsula Ambulance Service, supra*, 539 F.2d at 1018. While in retrospect it possibly might be said that Hill had made an incorrect choice, in rejecting dispatch to Electrical Equipment in the expectation of a possible Stone and Webster dispatch request, it cannot be said, judged from his position at that time, that he had made an unreasonable or imprudent choice and certainly not that he had been attempting to withdraw from the labor market in having made that choice.

[19] Significantly, Moltzen Electric did not list a reason on the payroll removal notice, which it had completed when it terminated Hill, for his termination, nor did it list him as being not eligible for rehire as did other employers when they had terminated Hill for cause in the past. Moreover, although respondents bear the burden of showing a willful loss of earnings in backpay proceedings, Respondent did not call any official of Moltzen Electric to testify concerning the reason(s) that it had terminated Hill. Consequently, there is no way of assessing whether Hill had been terminated for cause nor for comparing whether Hill's conduct would have led Stone and Webster to terminate him.

and Helicopter Leasing Sales, 227 NLRB 644, 645 (1976) (Dan Crowse); *Webb Manufacturing*, 174 NLRB 37, 38 (1969) (Larry A. Cline). Therefore, I conclude that Hill's termination by Moltzen Electric does not establish, of itself, that he had incurred a willful loss of earnings and, thus, does not terminate Respondent's backpay liability.

That conclusion is but reinforced by what occurred following Hill's termination by Moltzen Electric. For, Hill reregistered with Respondent's hiring hall and, within eight calendar days, accepted the third dispatch offered to him, on Friday, June 1, to Jackson Electric. He worked there until June 8, when he quit to go "home to spend with my family, you know, a two-week period in there." Although the General Counsel excludes that "vacation" period from the gross backpay period, due to Hill's unavailability for employment during it, it is alleged that the gross backpay period resumed when Hill had reregistered for dispatch on June 27 and continues through June 29, when Hill had been dispatched to Stone and Webster, thereby terminating altogether Respondent's liability for backpay. Yet, while the General Counsel argues that "Hill was entitled to take an unpaid vacation just as he would have been, absent Respondent's discrimination," there is no evidence to support that assertion. Further, interim employment may not simply be abandoned absent "justifiable cause, without incurring a willful loss of earnings within the meaning of the decisions." *Ozark Hardwood Co.*, 119 NLRB 1130, 1139 (1957); see also *Shell Oil Co.*, 218 NLRB 87, 88–90 (1975), affd. 461 F.2d 1264 (9th Cir. 1977). Indeed, in *Midwest Hanger Co. and Liberty Engineering Corp.*, 221 NLRB 911 (1975), the Board concluded that a discriminatee had incurred a willful loss of earnings when she quit interim employment, because it was located in an area where rents were too high for her to be able to pay for an apartment for herself and her disabled husband, and then moved to another area where rentals were lower but where prospects for employment were "dim." *Id.* at 920–921. Comparing the reason for that employee's decision to quit interim employment with that of Hill for having done so here, it would hardly be logical for any judicial system to conclude that the former but not the latter had incurred a willful loss of earnings. In the circumstances, I conclude that since Hill's need to reregister for employment in late June had been the product of his own decision to quit employment with Jackson Electric, thereby obliging him to seek new employment upon completion of his vacation, Respondent should not be charged with those elements of gross backpay that Hill would have earned from June 27 through 29 had he continued working for Jackson Electric.

Based upon the foregoing, I conclude that gross backpay consists of Hill's hourly wage rate, the daily subsistence payment and the hourly pension contribution. During the last calendar quarter of 1978, Hill was deprived of work for 3 days as a result of Respondent's unfair labor practice and, accordingly, is entitled to $405.87 gross backpay, plus pension contribution.

During the first calendar quarter of 1979, Hill had been deprived of employment from January 2 through 5 and, again, from February 12 through March 30, a total of 39 working days[20] or 312 working hours. Consequently, the gross backpay for the first calendar quarter of 1979 amounts to $5,276.31, plus pension contribution.

The gross backpay computation for the second calendar quarter of 1979 is somewhat more involved. From April 2 through Thursday, May 31, when the contractual hourly wage rate increased, there are eight full workweeks and three additional workdays.[21] Thus, through May 31, there are 43 workdays or 344 workhours in this portion of that calendar quarter. Accordingly, gross backpay for that period is $5,817.47. On and after June 1, the contractual hourly wage rate increased to $15.63 per hour or $125.04 per workday. As found above, Hill unjustifiably quit employment on June 8 and, when his "vacation" break and the time thereafter that it took him to obtain new employment are considered, he incurred a willful loss of earnings for the remainder of the backpay period. Thus, for the 6 workdays from June 1 through 8, Hill's gross backpay is $850.14. Therefore, Hill's total gross backpay for the second calendar quarter of 1978 is $6,667.61, plus pension contribution.[22]

V. INTERIM EARNINGS

As must be apparent from the foregoing, while Hill had no interim earnings following Respondent's failure to notify him of the reemployment opportunity with Wing Electric in December, he did hold three jobs between February 12 and June 8: from February 20 through March 5 with Town & Country, where he earned $1,067.76; from April 3 through May 23 with Moltzen Electric, where he earned $3,967.02; and, from June 1 through June 8 with Jackson Electric, where he earned $750.24. These amounts are properly deductible from gross backpay. However, the General Counsel contends that, in each instance, the amount of interim earnings should be reduced by the expenses of lodging, meals, and weekly transportation to and from the jobsite incurred by Hill.

Discriminatees are entitled to recover expenses of interim employment, specifically room, board, and transportation expenses. See, e.g., *Trident Seafood Corp.*, 244 NLRB 566 (1979). In general, Respondent argues that no food and lodging expenses should be permitted Hill if he is entitled, as concluded above that he is, to receive the daily subsistence payments as part of gross backpay inas-

[20] Of course, during 10 of those working days, Hill had been working for Town & Country. Nevertheless, so that the method of computation is clear, those days are included for the gross backpay computation from which his Town & Country earnings—which did not include a daily subsistence payment, but did include the contractual wage rate and hourly pension contributions—are deducted.

[21] Excluding the unpaid Memorial Day holiday.

[22] In reaching this conclusion, I have considered, but reject, Respondent's added argument that Hill should be deemed to have incurred a willful loss of earnings by not having searched for employment at locations other than at its hiring hall. Hill testified that he was a "union member." Respondent did not dispute his testimony that, "It's against the rules of the union to take employment with a non-union contractor." Accordingly, to have done what Respondent now suggests would have caused Hill to violate Respondent's own rules for members. Moreover, Respondent has not presented any specific evidence that such added efforts would have been fruitful in enabling Hill to secure employment substantially equivalent to that from which he had been deprived by its unfair labor practices.

much as, argues Respondent, this would represent double recovery for living expenses during the backpay period. Yet, as found above, the subsistence payments were made automatically to employees without regard to whether or not they incurred any actual inconvenience and living expenses while performing work at locations beyond the specified distance from the Reno basepoint. Accordingly, as found above, the payment is more in the nature of an allowance than in the nature of a reimbursement for expenses actually incurred and would have been received by Hill, but for Respondent's acts of discrimination, without regard to whether or not he had incurred actual expenses and without regard to the amounts of any such living expenses that he incurred. In point of fact, because of the trailer for which he had rented space in Golconda and his ability to live and cook in it, his actual living expenses, absent Respondent's discrimination, would have been minimal between late December and June.

Even if that were not the fact, however, it is clear that as a result of Respondent's discrimination against him, Hill had been obliged to accept employment at locations other than near Golconda. As a result, he had been obliged to incur meal and lodging expenses that he would not otherwise have incurred had he been permitted to employment at Valmy. Consequently, these expenses were incurred as a direct result of Respondent's unfair labor practices. Moreover, during the backpay period, Hill had been obliged to continue paying rental for the trailer space at Golconda and, accordingly, the lodging expenses which he had incurred while working for Town & Country, Moltzen Electric and Jackson Electric represent amounts clearly in addition to amounts that he had to pay for trailer rental. Further, rather than having been able to prepare his own meals in that trailer, Hill had been obliged to purchase meals in other areas and, accordingly, had incurred the cost of eating in restaurants. Thus, it cannot be said, in fact, that Respondent's discrimination had the effect of sparing Hill living costs that he would otherwise have incurred had he been permitted by Respondent to work at Valmy.

It must be kept in focus that Respondent is the wrongdoer in this matter and, as such, is the one who bears the burden of any uncertainty arising as a result of its discrimination against Hill. In the circumstances here, I conclude that Respondent has failed to establish that inclusion of the subsistence payments in Hill's gross backpay serves to preclude deduction of his actual living and meal expenses from the employment which he accepted during the backpay period and which he had been obliged to accept as a result of Respondent's unfair labor practices.

In the final analysis, Respondent has not disputed the amounts listed as Hill's cost of lodging while having worked for Town & Country, Moltzen Electric and Jackson Electric. A somewhat different situation arises with regard to the amounts alleged as food expenses, though in the final analysis, I conclude that the amounts alleged in the specification and amended specification are acceptable. The compliance officer and Hill each testified that the food expense figures were based on an average of Hill's estimates regarding the daily costs of his food. This average amounts to $12 per day. But Hill testified that he had a book in which he had recorded the actual cost of each meal. Neither the current compliance officer nor his precedessor in that position had ever asked to examine, much less actually examined, that book and its contents. Based upon this failure to examine Hill's book, Respondent argues that the estimates should not be accepted when actual figures were available. In some circumstances, there might be merit to such an argument. "However, the fact that expense computations are based on estimates does not preclude their acceptance . . . ." *Aircraft and Helicopter Leasing and Sales*, 227 NLRB 644. Here, the amount claimed, $12 per day, hardly seems excessive. Moreover, at no point did Respondent request, must less subpoena, the book in which Hill had recorded his actual meal expenses. While it might have been better practice for the compliance officer to have examined the book itself and the figures contained therein, in the foregoing circumstances I conclude that the $12 per day figure is not unreasonable and serves as an adequate approximation of Hill's meal expenses while working between February 12 and June 8.

Inasmuch as the General Counsel now concedes that Hill is entitled only to transportation expenses between Golconda and Reno and in view of the fact that Respondent has disputed neither the 10 cents per mile claimed nor the number of trips made in connection with Hill's employment between February 12 and June 8, I conclude that Hill's transportation expenses are: three round trips in connection with the Town & Country job (180 mi. x 6 x 10 cents per mile) for a total of $108; eight round trips in connection with employment by Moltzen Electric for a total of $288; and, three round trips in connection with employment by Jackson Electric for a total of $108.

Conclusions

For the reasons set forth above, I conclude that the correct net backpay for Hill should be computed as follows. During the fourth calendar quarter of 1978, his gross backpay was $405.87. As there were no interim earnings during that period, that is also the net backpay figure for that quarter.

During the first calendar quarter of 1979, Hill's gross backpay was $5,276.31. His interim earnings from Town & Country were $1,067.76, which are reduced by transportation, lodging, and meal expenses incurred in performing that employment, amounting to $361.32 so that his net interim earnings were $706.44 leaving a net backpay figure of $4,569.87 for the first calendar quarter of 1979.

During the second calendar quarter of 1979, Hill's gross backpay was $6,667.61. His interim earnings from Moltzen Electric and Jackson Electric amounted to $4,717.26, which is reduced by transportation, lodging, and meal expenses totaling $1,447.92, so that his net interim earnings were $3,269.34, leaving a net backpay figure of $3,398.27 for the second calendar quarter of 1979.

Therefore I conclude that Hill's net backpay as a result of Respondent's discrimination against him is $8,374.01.

With respect to pension contributions, during the three calendar quarters, there were a total of 728 working hours of which Hill had been deprived by virtue of Respondent's unfair labor practices. The amended specification lists 390 hours as having been devoted to interim employment, 72 hours in the first calendar quarter of 1979 and 318 hours during the second calendar quarter of 1979. Therefore, I conclude that, as a result of Respondent's discrimination, Hill suffered a loss of 338 pension contribution working hours at the rate of $1.37 per hour or a total of $463.06.

ORDER[23]

It is hereby ordered that International Brotherhood of Electrical Workers, Local 401, make Lee Hill whole by payment of the amounts set forth above with interest thereon computed in accordance with standard Board formula as required by the Board in its Decision issued August 19, 1980.[24]

[23] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[24] Respondent's contention that interest owing on backpay should be ordered abated during the period of purported delay occasioned by the Regional Director's investigation of the compliance matters involved in this proceeding is hereby denied. There is simply no basis for abating interest for any period under backpay principles. Moreover, Respondent has failed to produce any evidence during the hearing that would show that there had been a delay in this proceeding occasioned by the failure of the Regional Office's proper performance of its responsibilities in connection with this matter.